

On the Scope of Criminal Tools for the Crime of Disseminating Obscene Articles

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Abstract

Since the law has only general provisions on the meaning and scope of criminal tools, judicial organs still lack a unified understanding of the identification and handling of criminal tools in practice, and have not formed a scientific and correct approach. Obscene materials usually have a carrier, but with the advancement of technology, the carrier and information can be separated from each other, and the traditional practice of disposing of obscene materials can no longer be followed. The scope of the crime tool is a question worth exploring. Through the comparative research method and the literature induction method, the article points out the characteristics of the crime tool for the crime of disseminating obscene articles, and aims at the judicial organs' practice of identifying and disposing of the crime of disseminating obscene articles. The problems of the tools are put forward to improve and remedy measures, so as to realize the situation of equal emphasis on combating illegal crimes and protecting legitimate rights and interests.

Keywords

Obscene Articles; Tools of Crime; Disposal Paths; Confiscation.

1. Qualitative Analysis of Criminal Tools Related to the Crime of Disseminating Pornographic Materials

1.1. The Importance of Characterizing the Criminal Tools of the Crime of Disseminating Pornographic Materials

Our country's law defines the scope of criminal tools in a relatively general manner. Although such principled provisions allow judicial organs to have a targeted approach when handling cases, there are also some drawbacks. If the scope of criminal tools for the crime of spreading pornographic materials is not properly controlled, it will not only result in disposal The tools of crime conflict with the legitimate rights and interests of criminals and third parties, and even lead to the re-distribution of obscene materials. Therefore, it is necessary to re-understand the scope of criminal tools for the crime of spreading obscene materials. The so-called obscene articles refer to articles that contain specific descriptions of sexual behavior or promote pornography to the public. It can be concluded that "obscenity" is the legal judgment standard and basic feature of obscene articles, and whether the carrier carrying obscene information is physical or virtual. If it has obscene features, it should be identified as obscene. According to the characteristics of obscene electronic information, it can be inferred that it can also be virtualized as a tool for carrying obscene electronic information. Common virtual crime tools include: pornographic websites, software, etc. In fact, these virtual carriers themselves are not obscene, and the obscene photos on the back, sound, video and other electronically obscene information is the object of criminal law assessment.

In addition, the criminal tool of the crime of disseminating pornographic materials has certain reference significance for the conviction and sentencing of the defendant to a certain extent. In the context of the era of big data, the network, as the carrier of dissemination of obscene

materials, is extremely harmful. On the one hand, the network can break through the limitations of time and space and spread widely; on the other hand, the objects of information dissemination are not specific. Adults are also frequently active on the Internet. The dissemination of obscene information on the Internet will cause minors to passively receive obscene information and damage the physical and mental health of minors. The high speed of network transmission, the concealment of users and the openness of the main body make the network a hotbed for spreading obscene materials. The use of network tools to spread obscene materials is undoubtedly more harmful to society than traditional tools such as books and DVDs. Therefore, judicial organs It is necessary to accurately grasp the scope of criminal tools for disseminating pornographic materials, and consider the harmfulness of the criminal tools used by criminals.

1.2. Qualitative Research on the Criminal Tools of the Crime of Disseminating Pornographic Materials

Scholars Gao Mingxuan and Mark Chang believed in their co-authored "Criminal Law": "All property that can be used by criminals to commit crimes is a tool of crime"; Su Huiyu wrote in the book "Criminal Law" edited by him. A more detailed distinction is made: "Criminal instruments generally refer to all physical objects used for crime, which can be ordinary items or prohibited items". Although scholars have slightly different expressions on the scope of identifying criminal instruments, their views are convergent. At present, no scholars in my country's academic circles have conducted research on the criminal tools of the crime of disseminating obscene materials, but the characterization of the crime tools can be applied by analogy between the charges. However, according to the characteristics of the crime of spreading obscene materials, the scope of the crime tools can be Continue to explain narrowly. In judicial practice, many tools are innocently involved only because of the criminal behavior of the perpetrator, including primary tools and secondary tools, self-owned tools and other tools. Judicial organs also need to distinguish between criminal tools and non-criminal tools based on facts. It would be unbiased to divide criminal tools based on theory alone.

1.3. The Characteristics that Should be Possessed by the Criminal Tool of the Crime of Disseminating Pornographic Materials

The criminal tools for the crime of disseminating pornographic materials shall refer to the tools that the perpetrator personally owns and are directly and closely related to the criminal act and the purpose of the crime in the course of the crime. If it provides tools, the items provided by a third party may also be identified as criminal tools. A criminal tool for the crime of disseminating obscene materials shall have the following four characteristics:

1.3.1. The Criminal Tool of the Crime of Disseminating Pornographic Materials Should Only Belong to the Perpetrator

In real life, we often see criminals commit crimes by using tools that they share with a third person or borrow tools that are exclusive to the third person. Judicial organs generally do not spend a lot of human and material resources to identify the item when making a judgment. Whether it is only owned by criminals, but people and things are separate, without the behavior of people, things will not be transformed into criminal tools. In view of this, before judging that the criminal tool has been confiscated, the judicial organ should determine whether the object belongs only to the criminal himself, and in line with the principle of not confronting the bona fide third party, return the property of the bona fide and legal third party, so as to ensure judicial justice. Rigor and credibility. If the other party or the lender knows that others are spreading obscene materials and still provides property to them, the co-owned party and the lender may indeed constitute a helper, and the property lent by the third party can also be assessed as a criminal tool. , and confiscated according to law.

1.3.2. Relevance

It is also necessary to consider whether it directly acts on the criminal object, such as the printing press for printing obscene books and the equipment for shooting obscene videos. Relevance is not only an important feature of criminal tools, but also an important criterion for determining the scope of criminal tools. The positive view is that the instrument of crime must be an item used only and specifically for the commission of a crime. The negative point of view is that it is too strict and not conducive to fighting crime if it is defined as an instrument of crime that is only used and specifically used to commit a crime. To sum up, in the crime of disseminating obscene articles, the obscene articles themselves can be regarded as the object of confiscation, but in reality, many cases show that in addition to the obscene articles themselves, other articles involved in the cases do not directly affect the object of crime, Its function is not for criminals to engage in related crime settings, but to facilitate the daily life of the public, for example, as an electronic device for communication, as a printer for printing and production, and so on. Therefore, the role and degree of connection of the offender's articles on the crime of spreading pornographic articles should be fully considered.

1.3.3. Purpose

The subjective intention of the perpetrator is one of the elements for the conviction of the crime of disseminating obscene materials. Negligence, such as computer infection, manipulation of the virus system by others, resulting in the disclosure of obscene electronic information, etc., does not constitute this crime. There are different views in the academic circles on the purposeful characteristics of the criminal tools of the crime of disseminating pornographic materials. The negative view is that, as long as personal property used in the crime should be confiscated and disposed of, the crime committed by the offender should not be taken too seriously. The positive view is relatively objective, that is, the scope of criminal tools for the crime of disseminating pornographic materials should be limited to intentional crimes. In the case of negligent dissemination of obscene materials, the perpetrator does not subjectively pursue the idea of disseminating obscene materials, and the harmful consequences caused by the dissemination of obscene materials are caused by the perpetrator's lack of the necessary duty of care and prudence, and the perpetrator is subjectively opposed to the behavior resulting in hazardous results. The communication tools used by criminals in the crime of negligently disseminating obscene materials are not under the control of the criminals' subjective will. Therefore, it seems a little bit to identify the criminal tools only on the basis that the crime of disseminating obscene materials exists and there are criminal tools for the crime of disseminating obscene materials. far-fetched.

2. Analyze the Problems Existing in the Disposal of the Criminal Tools of the Crime of Spreading Pornographic Materials

A tool is an item that can meet human needs and be manipulated and used by human beings, so it integrates exchange value and use value. The tools used to spread obscene materials exist in the form of the perpetrator's legal property before they are identified as criminal tools. The following two problems exist in judicial practice regarding the disposal of criminal tools for the crime of spreading obscene materials.

2.1. The Scope of Criminal Instruments is Vaguely Defined and There is a Lack of Objective Disposal Standards

The so-called tools of crime, provided that the defendant can call the tools used by the defendant as criminal tools after being convicted as a criminal. When the defendant is not convicted as a criminal in court, the tools used by the perpetrator during the crime are often seized by the investigative organs. Most of the preservation and determination of the relevance

of tools and criminal cases only rely on the subjective standards of judicial organs and the subjective will of judicial personnel to make judgments. A common situation in judicial practice is that the third party does not know that his own articles are used to carry out the act of spreading obscenity or that his own articles are involved due to his own negligence. In addition, the properties of criminals are often forcibly seized only for the needs of criminal investigation and for reasons related to the case, which will undoubtedly lead to violations of the legitimate property rights and interests of criminals and third parties.

At the same time, there are cases in which the virtual information stored in the material is not treated differently, and the obscene information and the carrier cannot be separated, so that the tools and equipment are identified as criminal tools together. Because the measures of the criminal tools of our country are only "confiscation", the judicial organs do not have uniform standards and practices for dealing with the mixing of such major criminal items with other items, and there is no other mechanism that can replace confiscation and achieve the preventive purpose of confiscation. When judging a case, the judiciary focuses on how to sentence criminals, lacks attention to the identification of criminal tools, and hardly spends a lot of judicial resources on the identification of confiscated tools. However, in modern society, electronic products and equipment are used as Material resources and judicial resources belong to the same part of social resources, and there is no mutual primary and secondary relationship. If every time a large criminal tool case is encountered, the judicial organ will not conduct accurate inspection and identification when it is confiscated. If they are disposed of together for criminal tools, they will lead to the depletion of social resources.

2.2. Incomplete Handling of Criminal Tools and Backward Means of Traceability

In view of the blatant nature of dissemination, judicial organs face two major problems when dealing with criminal tools for disseminating pornographic materials: one is that it is difficult to track the spread of obscene materials to the end through judicial power, so that the chain of transmission cannot be cut off; In life, the obscene items obtained by criminals may be purchased from the market or obtained by accident, so to some extent, the criminal is not a first-hand spreader, but may be a branch in the spread chain Therefore, it is difficult for judicial organs to identify the source of dissemination of obscene materials, resulting in incomplete disposal of criminal tools. Traditional obscene items are mostly found in books and posters. With the innovation and development of network technology, various network services and network products are also formed. While these network services provide people with the convenience of data backup, resource sharing and communication, they have also gradually developed into new bridges for disseminating online obscene electronic information, such as video playback software, establishment of hyperlinks to obscene electronic information, circle of friends, various News and shopping stations, etc., users can use it by registering and setting a password. Among them, various news and shopping stations belong to the surface network, the surface network is easy to access, and judicial organs are also within reach, but some websites are full of obscene information. Not built on the surface web, but hidden in the dark web. The dark web has the characteristics of untraceable website users and visitors, strong confidentiality, etc. Judicial personnel can only log in through specific software authorization or special computer settings. Compared with traditional offline communication, Internet communication has a wider audience and is more convenient to operate. For judicial organs, it is more challenging to trace the source and track the foothold of obscene materials.

3. The Perfect Path to Confiscate and Dispose of the Criminal Tools of the Crime of Spreading Pornographic Materials

The confiscation of criminal tools does not belong to the scope of the main and additional punishments stipulated in the Criminal Law, which leads to different judges in the context of discretion, and different judges when handling cases. . In real life, there are many cases in which criminals use expensive electronic equipment to spread electronically obscene information through the Internet. In order to solve the chaotic problem in the process of confiscation and disposal of the criminal tools of the crime of spreading obscene materials, the means of dealing with the criminal tools of the crime of spreading obscene materials can be described as follows:

3.1. Distinguish the Physical Attributes and Attribution of the Criminal Tools of the Crime of Disseminating Pornographic Materials

The so-called distinction of physical attributes of criminal tools means the distinction between carriers and obscene information. Traditional obscene articles, such as obscene books, pictures, etc., where the carrier and information are mixed, will cause damage to the material properties due to separation, so they cannot be used as objects of distinction. In view of the crime of spreading obscene materials moving towards the stage of high-tech innovation, this paper discusses the distinction between the use of the Internet to spread obscene materials in confiscation and disposal. First of all, the investigative organs should improve their investigative technical means, and strip electronically obscene information from electronic devices through actor assistance, code cracking, etc., and then destroy it. They can also cooperate with Internet service companies to urge network users to use their real names and request Internet service companies should cooperate with investigations, improve the ability of investigation agencies to track and trace the dissemination of obscene materials, and completely destroy obscene information, so as to effectively combat and control criminals. In addition, it is necessary to distinguish the attribution of the tools, that is, the investigative organs are required to abandon the principle of only investigating the needs of the crime, and improve the seizure standard of the criminal tools for the crime of disseminating pornographic materials. Items directly related to the conduct shall be excluded from seizure.

3.2. The Degree of Disposal of Criminal Instruments Should be Commensurate with the Crimes of the Criminals

The criminals who commit the crime of disseminating obscene materials should be sentenced to equivalent personal or property penalties, but in judicial practice, the final judgment of the judicial organs should be dealt with together with the criminal tools used by the criminals in addition to the sentencing of the criminals. The item itself is a contraband, and it is understandable to directly destroy such obscene information that is difficult to strip from the carrier. However, the common obscene items in modern society are often spread through the Internet, which increases the judicial organs' identification space for criminal tools. However, Some courts directly sentence and dispose of the criminal's computer, tape recorder and other communication equipment. Although the final sentence is limited to personal punishment, the indiscriminate disposal of the criminal's expensive items is tantamount to adding property punishment. Therefore, the principle of appropriateness should be followed, that is, in the process of judging whether it is necessary to confiscate and dispose of criminal instruments, judicial personnel need to analyze specific issues and the role of criminal instruments in the criminal process should be fully considered on a case-by-case basis. Considering the degree of social harm and the benefits obtained from the crime by the perpetrator, the relationship between the value of the criminal tool for the crime of spreading pornographic materials and the social harm of the perpetrator should be balanced.

3.3. Adhere to Reasonable and Proper Seizure and Disposal Procedures

Reasonable and proper procedures for seizing and disposing of criminal tools are an important requirement to protect the property rights and interests of criminals. Although the procedure of seizing and disposing of criminal instruments is different from judicial procedure, it still plays a pivotal role in protecting the basic rights of criminals. , all items that can be defined as tools of crime must go through strict procedures. When the legitimate rights and interests of criminals themselves are seized and disposed of as tools of crime, any claim shall only be made in the corresponding legitimate and reasonable seizure and disposal procedural rules. There is meaning and possibility of existence. When detaining the tools at the crime scene, the investigative organs must strictly abide by the provisions of the current Criminal Procedure Law on detaining the property involved in the case. Before the seizure, the property should be counted and recorded, and the property of the criminal offender should be properly kept. In addition, a registration system should be established for valuables, a storage place should be set up, classified and stored according to the category of the seized items, and the obscene items themselves, such as sexual objects, books, pictures, etc., should be strictly kept to prevent secondary transmission. The final verdict will be dealt with later.

4. Epilogue

How to accurately delineate the scope of criminal tools for the crime of disseminating pornographic materials, and reasonably and justly confiscate and dispose of criminal tools is a small corner of the law. This article starts from the two aspects of the identification method of the crime of spreading obscene materials and the confiscation of criminal tools, combined with the viewpoints of the academic circles, and objectively puts forward the characteristics that the criminal tools of the crime of spreading obscene materials should have, in order to be targeted and comprehensive. Provide reference for sexual disposal of criminal tools and destruction of contraband. The second is to put forward the problems existing in the process of confiscation and disposal of criminal tools in judicial practice, and finally put forward suggestions based on the problems, in order to gain resonance and promote the development of effective crackdown on the crime of spreading pornography and rights protection.

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